

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 482

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO PHARMACY; ESTABLISHING A PHARMACY RECORDS AUDIT
PROCESS; PROVIDING FOR AN APPEAL PROCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Pharmacy Act is enacted
to read:

"~~[NEW MATERIAL]~~ AUDIT OF PHARMACY RECORDS.--

A. As used in this section, "entity" means a
managed care company, insurance company, third-party payor or
the representative of the managed care company, insurance
company or third-party payor.

B. An audit of the records of a pharmacy by an
entity shall be conducted in accordance with the following
criteria:

- (1) the entity conducting the initial on-site

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underscoring material = new
[bracketed material] = delete

1 audit shall give the pharmacy notice at least two weeks prior
2 to conducting the initial on-site audit for each audit cycle;

3 (2) an audit that involves clinical or
4 professional judgment shall be conducted by or in consultation
5 with a pharmacist;

6 (3) a clerical or record-keeping error,
7 regarding a required document or record, shall not necessarily
8 constitute fraud but such a claim:

9 (a) may be subject to recoupment; and

10 (b) shall not be subject to criminal
11 penalties without proof of intent to commit fraud;

12 (4) a pharmacy may use the records of a
13 hospital, physician or other authorized practitioner of the
14 healing arts for drugs or medicinal supplies written or
15 transmitted by any means of communication for purposes of
16 validating the pharmacy record with respect to orders or
17 refills of a dangerous drug or controlled substance;

18 (5) a finding of an overpayment or
19 underpayment shall not be a projection based on the number of
20 patients served having a similar diagnosis or on the number of
21 similar orders or refills for similar drugs and recoupment of
22 claims shall be based on the actual overpayment or underpayment
23 unless the entity demonstrates a statistically justifiable
24 method of projection or the projection for overpayment or
25 underpayment is part of a settlement as agreed to by the

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1 pharmacy;

2 (6) each pharmacy shall be audited under the
3 same standards and parameters as other similarly situated
4 pharmacies audited by the entity;

5 (7) a pharmacy shall be allowed at least
6 twenty-one business days, with reasonable extensions allowed,
7 following receipt of the preliminary audit report in which to
8 produce documentation to address any discrepancy found during
9 an audit;

10 (8) the period covered by an audit shall not
11 exceed two years, unless otherwise provided by contractual
12 agreement, from the date the claim was submitted to or
13 adjudicated by an entity or unless it conflicts with state or
14 federal law;

15 (9) an audit shall not be initiated or
16 scheduled during the first five calendar days of a month due to
17 the high volume of prescriptions filled during that time unless
18 otherwise consented to by the pharmacy;

19 (10) the preliminary audit report shall be
20 delivered to the pharmacy within one hundred twenty days, with
21 reasonable extensions allowed, after conclusion of the audit,
22 and the final report shall be delivered to the pharmacy within
23 six months after receipt of the preliminary audit report or
24 final appeal, as provided for in Subsection C of this section,
25 whichever is later;

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1 (11) the audit criteria set forth in this
2 subsection shall apply only to audits of claims submitted for
3 payment after July 1, 2007; and

4 (12) notwithstanding any other provision in
5 this subsection, the entity conducting the audit shall not use
6 the accounting practice of extrapolation in calculating
7 recoupments or penalties for audits.

8 C. Recoupment of any disputed funds shall occur
9 after final internal disposition of the audit, including the
10 appeals process set forth in Subsection D of this section.
11 Should the identified discrepancy for an individual audit
12 exceed twenty-five thousand dollars (\$25,000), future payments
13 to the pharmacy may be withheld pending finalization of the
14 audit.

15 D. Each entity conducting an audit shall establish
16 an appeals process under which a pharmacy may appeal an
17 unfavorable preliminary audit report to the entity. If,
18 following the appeal, the entity finds that an unfavorable
19 audit report or any portion of the audit is unsubstantiated,
20 the entity shall dismiss the audit report or the
21 unsubstantiated portion of the report of the audit without the
22 necessity of any further proceedings.

23 E. This section does not apply to any investigative
24 audit that involves probable or potential fraud, willful
25 misrepresentation or abuse."

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